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Filing date: **04/11/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201238
Party	Plaintiff Neways, Inc.
Correspondence Address	JOHN C STRINGHAM WORKMAN NYDEGGER 1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111 UNITED STATES tvuksinick@wnlaw.com, jhutchison@wnlaw.com, jgarcia@wnlaw.com
Submission	Motion to Suspend for Settlement Discussions
Filer's Name	Thomas R. Vuksinick
Filer's e-mail	tvuksinick@wnlaw.com, jhutchison@wnlaw.com, vgarrett@wnlaw.com
Signature	/Thomas R. Vuksinick/
Date	04/11/2014
Attachments	Motion for Suspension for Further Negotiation with Counsel.pdf(16572 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application Serial No. 85/74256
Published in the Official Gazette of April 19, 2011, Int'l Class 5
Filed: November 11, 2010
Mark: NEW WHEY

NEWAYS, INC.)	
)	Opposition No. 91201238
Opposer,)	
)	
v.)	
)	
NEW WHEY NUTRITION, LLC)	
)	
Applicant.)	

Motion for Suspension for Further Settlement With Consent
(With Supplemental Report Regarding Settlement Negotiations Incorporated)

Since the last motion to suspend the parties have continued to be actively engaged in settlement efforts with respect to these proceedings, as shown by the report regarding settlement negotiations incorporated into this motion below. As a result of those continued efforts the parties have reached an agreement in principle on the primary settlement terms. The parties do, however, need additional time to prepare a definitive written settlement agreement. The parties have agreed and Neways hereby requests, that these proceedings be suspended until May 14, 2014, an additional 30 days to allow the parties to continue their settlement efforts. It is further requested that all discovery and trial dates be extended 30 days and reset accordingly:

Time to Answer	Closed
Deadline for Discovery Conference	Closed
Discovery Opens	Closed
Initial Disclosures Due	Closed

Expert Disclosures Due	05/14/2014
Plaintiff's Notice on Whether Amendment of Answer is Contested	05/17/2014
Discovery Closes	06/13/2014
Plaintiff's Pretrial Disclosures	07/28/2014
Plaintiff's 30-day Trial Period Ends	09/11/2014
Defendant's Pretrial Disclosures	09/26/2014
Defendant's 30-day Trial Period Ends	11/10/2014
Plaintiff's Rebuttal Disclosures	11/25/2014
Plaintiff's 15-day Rebuttal Period Ends	12/25/2014

Report Regarding Settlement Negotiations

1. Current Status of Settlement Negotiations

The parties have made substantial progress toward settlement, having reached agreement in principle on all of the primary issues. All that remains is the preparation of a mutually acceptable definitive written settlement agreement. The parties hope to be able to complete the preparation of a written settlement agreement within the next 30 days.

2. Progress Toward Settlement During the Most Recent Suspension Period

During the most recent suspension period the parties have been able to resolve the primary issues that previously stalled the negotiations. The parties have agreed in principle on all of the primary issues.

3. Settlement Communications Since Last Motion to Suspend

a. March 15, 2014 email correspondence from Applicant with comments of the most recent terms proposed by Opposer.

b. March 18, 2014 email correspondence from Opposer to Applicant with attached document with revised claim terms.

c. March 26, 2014 telephone communication between Applicant's and Opposer's counsel re most recent proposed settlement terms.

d. March 26, 2014 telephone conference regarding Applicant's concerns regarding proposed settlement terms.

e. March 31, 2014 email correspondence from Applicant regarding its concerns re most recent settlement proposal.

f. March 31, 2014 email correspondence from Opposer in response to Applicant's email of earlier in the day.

g. April 10, 2014 email correspondence from Opposer to Applicant with draft documents containing revised settlement terms.

h. April 10, 2014 telephone conference between Applicant and Opposer regarding revised settlement terms.

i. April 11, 2014 email correspondence from Applicant approving settlement terms as last proposed by Opposer.

Neways has secured the express consent of all parties to this proceeding for the extension requested here.

Neways has provided an email address for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

peter.brody@ropesgray.com

tvuksinick@wnlaw.com

DATED this 11th day of April, 2014.

By: /s/ Thomas R. Vuksinick

THOMAS R. VUKSINICK
WORKMAN NYDEGGER

1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707
tvuksinick@wnlaw.com

ATTORNEY FOR OPPOSER
NEWAYS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR SUSPENSION FOR FURTHER SETTLEMENT WITH CONSENT was served upon Applicant via email and U.S. Mail and is addressed to the Applicant at the current correspondence address listed on the United States Patent and Trademark Office's TARR database:

Peter M. Brody
Nicole Rizzo Smith
Meera Nair`
ROPES & GRAY LLP
One Metro Center
700 12th Street NW, Suite 900
Washington, DC 20005
peter.brody@ropesgray.com
nicole.smith@ropesgray.com
meera.nair@ropesgray.com

Dated this 11th day of April, 2014.

/s/ Thomas R. Vuksinick

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